Supreme Court, U.S.
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NO. ____ OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

In Re: JAMES CONSTANT,

Appeal Court Nos
92-55465,92-56220,
92-56475

Debtor,

JAMES CONSTANT

Petitioner,

v.

ADVANCED MICRO-DEVICES, INC.; KRISTIN M. CANO; KANE, DALSIMER, SULLIVAN, KURUCZ, LEVY, EISELE & RICHARD; AT&T PARADYNE; JONATHAN R. ELLOWITZ; ANTHONY DE ALCUAZ; SKJERVEN, MORRILL, MACPHERSON, FRANKLIN & FRIEL; MORRISON & FOERSTER; LIMBACH & SUTTON; FUJITSU, LTD; FUJITSU MICROELECTRONICS; PAUL MALINGAGIO; SHEPPARD, MULLIN, RICHTER & HAMPTON; BAKER MILLS & GLAST; ACKER, UNDERWOOD & SMITH; FPS, INC; FULLBRIGHT & JAWORSKI; AMERICAN TELEPHONE & TELEGRAPH; SPENSLEY, HORN, JUBAS & LUBITZ; HITACHI AMERICA, INC.; PRETTY, SCHROEDER, BRUEGGEMAN & CLARK; HOPGOODE, CALIMAFDE, KALIL, BLAUSTEIN & JUDLOWE; ANALOG DEVICES, INC.;

94-10003

60 pp

NEC ELECTRONICS, INC.; BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN; BROWN & BAIN; MARCEL HOFF; INTEL CORP.; ROMNEY, GOLANT, MARTEN & ASHEN; AMERICAN MICROSYSTEMS, INC.; GOULD, INC.; TEXAS INSTRUMENTS, INC.; GROSSMAN, GRAVEN, PERRY & BLOCK; DIGITAL SWITCH, INC.; GRANGER ASSOCIATES, INC.; MUNGER, TOLLES & OLSON; ARNOLD; ROCKWELL INTERNATIONAL, INC.; TRW, INC.; WHITE & DURKEE; DAVID L. RAY, Trustee; SALTZBURG, RAY & BERGMAN;

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

James Constant
1603 Danbury Dr
Claremont, CA 91711
(909) 624-1801

Pro-per Petitioner

QUESTIONS PRESENTED

Should this Court resolve direct conflicts between the court of appeal's decisions and decisions of this Court and other Circuit Courts on the following matters:

1. Whether affirmative defenses of patent invalidity and of res judicata are claims for purposes of final judgements under Federal Rule of Civil Procedure 54(b).

2. Whether affirmative defenses of patent invalidity and of res judicata are claims for purposes of jurisdiction under 28 USC 1338,1331,1343,1334 and 28 USC 157(b)(2) (B) and (C).

3. Whether affirmative defenses of patent invalidity and res judicata offend due process when they deprive petitioner's right to be heard on claims of his complaints.

4. Whether the appeal court can make its decision without an inquiry into the question of subject matter jurisdiction raised by petitioner in the action.

5. Whether judgements in earlier cases may be subsequently attacked for lack of subject matter jurisdiction when it appears that the earlier judgements were manifest abuses of authority or have seriously impaired the public interest by deciding complaints on the basis of affirmative defenses of patent invalidity and res judicata or have infringed due process of a party's right to be heard on claims of a complaint.

6. Whether sanctions under Rule 11 of the Federal Rules of Civil Procedure can be considered on issues of defense in papers not signed by petitioner.

7. Whether a creditor's judgement is a lien against United States Patents under 28 USC 1962.

8. Whether courts have jurisdiction of subject matter to order the assignment of United States Patents by operation of California State laws.

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Constant v. Advanced Micro Devices,Inc. Case CV 88 0784 SVW Central District California CAFC 89-1122*aff'd* 4/11/89, 873 F.2d 1451. SCt 88-1933 cert.den. 10/2/89. ___U.S___, 110 S.Ct. 62 4

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Filmtec Corp. v. Allied Signal, Inc. (CAFC 1991) 939 F2d 1568, 1570 n.5 21,29

TABLE OF AUTHORITIES CITED - Continued

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First Federal Sav. & Loan Asso. v. Peterson (ND Fla 1981) 521 FSupp 416 9

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Geni-Chlor Int'l, Inc. v. Multisonics Dev. Corp. (CA9 1978) 580 F2d 981, 200 USPQ 67 22,28

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Johnson Chemical Co., Inc. v. Home Care Products, Inc. (CA2 1987) 823 F2d 28,30 20,28

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Schlagenhauf v. Holder (1964) 379 US 104, 13 LEd2d 152, 85 SCt 234 17,26

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Cases Page

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United Public Workers v. Mitchell
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United States v. Long
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U.S. Alkali Export Asso. v. U. S.
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TABLE OF AUTHORITIES CITED - Continued

Cases Page

Whitehurst v. Wright
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Wiley v. Coastal Corp. et. als.
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OTHER AUTHORITIES

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4 Wright & Miller, Federal Practice and Procedure
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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1993

In Re: JAMES CONSTANT,

Appeal Court Nos
92-55465,92-56220,
92-56475

Debtor

JAMES CONSTANT,

Petitioner

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ADVANCED MICRO-DEVICES, INC.; KRISTIN M. CANO; KANE, DALSIMER, SULLIVAN, KURUCZ, LEVY, EISELE & RICHARD; AT&T PARADYNE; JONATHAN R. ELLOWITZ; ANTHONY DE ALCUAZ; SKJERVEN, MORRILL, MACPHERSON, FRANKLIN & FRIEL; MORRISON & FOERSTER; LIMBACH & SUTTON; FUJITSU, LTD; FUJITSU MICROELECTRONICS; PAUL MALINGAGIO; SHEPPARD, MULLIN, RICHTER & HAMPTON; BAKER MILLS & GLAST; ACKER, UNDERWOOD & SMITH; FPS, INC; FULLBRIGHT & JAWORSKI; AMERICAN TELEPHONE & TELEGRAPH; SPENSLEY, HORN, JUBAS & LUBITZ; HITACHI AMERICA, INC.; PRETTY, SCHROEDER, BRUEGGEMAN & CLARK; HOPGOODE, CALIMAFDE, KALIL, BLAUSTEIN & JUDLOWE; ANALOG DEVICES, INC.; NEC

ELECTRONICS, INC.; BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN; BROWN & BAIN; MARCEL HOFF; INTEL CORP.; ROMNEY, GOLANT, MARTEN & ASHEN; AMERICAN MICROSYSTEMS, INC.; GOULD, INC.; TEXAS INSTRUMENTS, INC.; GROSSMAN, GRAVEN, PERRY & BLOCK; DIGITAL SWITCH, INC.; GRANGER ASSOCIATES, INC.; MUNGER, TOLLES & OLSON; ARNOLD; ROCKWELL INTERNATIONAL, INC.; TRW, INC.; WHITE & DURKEE; DAVID L. RAY, Trustee; SALTZBURG, RAY & BERGMAN;

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, James Constant, respectfully prays that a writ of certiorari issue to review the Memorandum of the United States Court of Appeals for the Ninth Circuit entered on December 3, 1993 affirming the district court's dismissal of the complaint on grounds of res judicata without considering important exceptions to that rule which allow judgements to be collaterally attacked when the public interest is seriously impaired.

OPINIONS BELOW

The unpublished written opinion of the Court of Appeals appears in Appendix A to this Petition. The order dismissing complaint of the District Court for the Central District of California appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeal's Opinion in this matter was filed on 3 December, 1993. A timely petition for Rehearing and Suggestion that Case is Heard In Banc was filed on 16 December, 1993. The Court of Appeal's denial of the Petition for Rehearing was issued on 10 January, 1994 and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 54(b) involved in the earlier and instant cases is set forth in Appendix D.

Jurisdictional Statute 28 USC 1338 involved in earlier Cases 1,3,4; Jurisdictional Statutes 28 USC 1331 and 1343 involved in earlier Case 2; and Jurisdictional Statutes 28 USC 1334 and 28 USC 157(b)(2)(B) and (C) involved in the instant case are set forth in Appendix E.

Amendment V to United States Constitution involved in earlier Case 2 and in the instant case is set forth in Appendix F.

Federal Rule of Civil Procedure 11 involved in earlier Case 2 and in the instant case, and Statutes 28 USC 1962 and 35 USC 261 involved in the instant case are set forth in Appendix G.

STATEMENT OF THE CASE

In earlier (pre-bankruptcy) Cases 1-4, petitioner's complaints were dismissed on issues of affirmative defenses[1]. Petitioner filed for bankruptcy and brought the instant case in the bankruptcy court entitled Objections To Creditor's Claims Based On Void Judgements Obtained Through Fraud. The bankruptcy court had jurisdiction pursuant to 28 USC 1334 and 28 USC 157(b)(2)(B) and (C). Objections were made under Bankruptcy Rule 3007. The reference was withdrawn to the district court.

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[1] Earlier Case 1 made claims for patent infringement. The district court had jurisdiction pursuant to 28 USC 1338. The courts found 2 of petitioner's patents invalid under Rule 56. *Constant v. Advanced Micro Devices, Inc.* (CAFC 88) 848 F.2d 1560, 7 USPQ2d 1057 *cert. den.* 488 U.S. 892 (1988).

Earlier Case 2 made claims that the judgement in earlier Case 1 was procured by fraud, and claims for violations of constitutional, and civil rights. The district court had jurisdiction pursuant to 28 USC 1331 and 1343. The courts dismissed the case on issues of defense under Rule 56 (collateral estoppel) and Rule 12(b) (absolute immunity). Cases CV 87 6766R/7046R/6592R/7315R Central District, California 1987) *aff'd* CAFC 88-1195 to 88-1198 CAFC 8/25/88 unpublished memorandum decision.

Earlier Case 3 made claims for patent infringement. The district court had jurisdiction pursuant to 28 USC 1338. The courts dismissed the case under Rule 41(b). *Constant v. Advanced Micro Devices, Inc.* Case CV 88 0784 SVW Central District California CAFC 89-1122 *aff'd* 4/11/89. 873 F.2d 1451. S Ct 88-1933 *cert. den.* 10/2/ 89. ___U.S___, 110 S.Ct. 62.

Creditor's earlier Case 4 made claims for invalidity of petitioner's patents. Petitioner counter-claimed for patent infringement. The district court had jurisdiction pursuant to 28 USC 1338. The courts found petitioner's patent invalid under Rule 56. *Advanced Micro-Devices, Inc. v. Constant* C 88 20101 RPA Northern District, California 1988 *aff'd* CAFC 89-1432.

The complaint makes four counter-claims objecting to creditor's claims against the estate[2]:

1. In earlier Cases 1-4 the courts lacked subject matter jurisdiction.

2. In earlier Case 3 the courts lacked personal jurisdiction over creditors, and in earlier Case 4 the courts lacked personal jurisdiction over petitioner.

3. In earlier Cases 1-4 judgements against petitioner were obtained in violation of due process.

4. In earlier Cases 1-4 judgements against petitioner were obtained by fraud.

In its Memorandum, under Dismissal of the Complaint, in 92-55465 the Appeals Court held that petitioner's instant action was barred by res judicata[3]. In No. 92-56220, the Appeals Court held that the district court did not abuse its discretion by imposing Rule 11 sanctions and awarding attorney's fees. In

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[2] A claim objection may raise issues under federal or state law or issues running to the allowability of creditor's claims. When joined with a counterclaim it is filed as an adversary proceeding pursuant to Bankruptcy Rule 7001 which provides for equitable relief including relief provided by Bankruptcy Rule 9024 [Relief from Judgement or Order]. See *Collier On Bankruptcy* 15th ed. Vol. 8 Chapters 3007,7001,9024. Whether or not a claim is to be allowed is a judicial determination. See *Heiser v. Woodruff* 327 US 726 (1946).

[3] Because of the relative importance of issues and space limitations, other issues decided by the appeals court (Withdrawal of Reference, Recusal Motion, and Prefiling Order) are not addressed here.

No. 92-56474, the Appeals Court affirmed the district court's order assigning petitioner's patents and copyrights to the U. S. Marshall, under California laws, to satisfy the court's judgement.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the reasons that the opinions below in the earlier and instant cases conflict with previous decisions of this Court and with the decisions of other Circuits.

The following points of facts were overlooked by the appeals court:

1. Claims in the instant complaint are not identical to claims in the earlier cases. *21 Fed. Proc. LEd* 51:201 (citations for rule of identical claims); *Scott v. Kuhlman* (CA9 1984) 746 F2d 1379.

2. No claims in earlier Cases 1-4 or in the instant case were actually adjudicated on merits[4]. *21 Fed. Proc. LEd* 51:193,201 (citations for rule of adjudicating actual claims); *Golden v. Pacific Maritime Association* (CA9 1986) 786 F2d 1425, 40 BNA FEP Cas 968. Earlier Cases 1,3,4 were deter-

[4] In earlier Case 3 petitioner moved to dismiss the complaint for lack of personal jurisdiction. The motion was not decided by the district court. See complaint par. 73. In earlier Case 4 petitioner filed papers objecting to venue. Objections were not decided by the district court. See complaint par. 84.

mined on affirmative defenses of patent invalidity. Earlier Case 2 was determined on affirmative defenses of collateral estoppel (as to non-judicial parties) and judicial immunity (as to judicial parties)[5]. The instant case was decided on the affirmative defense of res judicata.

3. No hearings on claims were held in earlier and instant cases. *Allen v. McCurry* (1980) 449 US 90, 66 LEd2d 308, 101 SCt 411 (citations for rule of due process).

The following points of law were overlooked by the appeals court:

1. Whether affirmative defenses of patent invalidity in earlier Cases 1,3,4, of collateral estoppel and judicial immunity in earlier Case 2, and of res judicata in the instant case are claims for purposes of final judgements under Federal Rule of Civil Procedure 54(b).

2. Whether affirmative defenses of patent invalidity in earlier Cases 1,3,4, of collateral estoppel and judicial immunity in earlier Case 2, and of res judicata in the instant case are claims for purposes of jurisdiction under 28 USC 1338 in earlier patent Cases 1,3,4, under 28 USC 1331,1343 in earlier non-patent Case 2, and under 28 USC 1334 and 28 USC 157(b)(2)(B) and (C) in the instant case.

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[5] Fraud, constitutional, and civil rights claims in earlier Case 2 were different from patent claims in earlier Case 1. Contrary to the appeal court statement (p. 4 App. A), Judge Real, who presided over earlier Case 2, did not preside over earlier patent cases 1,3,4.

3. Whether affirmative defenses in the earlier and instant cases, which deprive petitioner's right to be heard on claims of his complaints, offend due process.

4. Whether petitioner's challenges to the court of appeal's jurisdiction in the instant case and the public interest of holding courts to their prescribed jurisdiction render judgements voidable in the instant and earlier cases.

5. Whether petitioner in earlier Cases 2,3 and in the instant case can be sanctioned for issues of defense in papers not signed and filed by the petitioner.

6. Whether petitioner's United States Patents are subject to assignment by operation of California state law.

A. Judgements In Earlier Cases And In Instant Case Are Not Final

1. The entry of an order under Federal Rule of Civil Procedure 58 is subject to the provisions of Federal Rule of Civil Procedure 54(b) governing multiple claims and parties. A procedural defense not necessary for resolving claims is not a claim for purposes of Rule 54(b).

2. Judgements must be determined on the merits of a cause of action. *Sears Roebuck & Co. v. McKay* (1956) 351 US 427, 100 LEd 1297, 76 SCt 895, 1956 CCH Trade Cases 68370; *Curtis Wright Corp. v. General Electric Co.* (1980) 446 US 1, 64 LEd2d 1, 100 SCt 1460, 29 FR Serv2d 221.

3. An affirmative defense does not present claims for relief under Rule 54(b). *Flynn & Emrich Co. v. Greenwood* (CA4 1957) 242 F2d 737, *cert. den.*, 353 US 976, 1 LEd2d 1137, 77 SCt 1060; *Smith v. Benedict* (CA7 1960) 279 F2d 211, 3 FR Serv2d 851; *First Federal Savings & Loan Asso. v. Peterson* (ND Fla 1981) 521 FSupp 416.

4. It is necessary to adjudicate the claims for four reasons, first, to fulfill the requirements for adjudicating claims under Rule 54(b), second, to fulfill the requirements for adjudicating claims under 28 USC 1338,1331,1343,1334 and 28 USC 157(b)(2)(B) and (C), third, to protect the right to be heard on claims of a complaint and, fourth, to determine whether sanctions are warranted under Federal Rule of Civil Procedure 11 for claims in papers actually signed and filed by petitioner.

B. Judgements In Earlier Cases And In The Instant Case Based On Affirmative Defenses Lack Jurisdiction

1. In *Christianson v. Colt Industries* (1988) 108 SCt 2166, 100 LEd2d 811, in a case involving the same Federal Circuit judges who affirmed earlier Cases 1-4, this Court held that a patent law defense of patent validity is not a claim (cause of action) for purposes of jurisdiction under 28 USC 1338. More generally, this Court held that a defense or procedure is not a claim under 28 USC 1331 and 28 USC 1343. Clearly, therefore, the earlier non- bankruptcy Cases 1-4 were decided on issues of defenses without jurisdiction of the subject matter.

2. In the instant case, the district court's jurisdiction is under 28 USC 1334, 28 USC 157(b)(2)(B) [allowance or dissallowance of claims] and (C) [counter- claims against persons filing claims against the estate][6]. There is nothing in the record of the instant case that shows that creditor's claims were judicially determined as allowed or dissallowed or that petitioner's counterclaims against creditor's claims were adjudicated on the actual merits. Therefore, assuming arguendo that petitioner's counterclaims collaterally attacking earlier judgements are without merit, the courts failed their jurisdictional duty to judicially determine whether creditor's claims are allowable. *Heiser, supra.*

3. Earlier Cases 1-4 and the instant case were decided on issues of defense not claims (causes of action) of the complaint. However, a district court's jurisdiction is over claims not issues of defense. A suit arises under the law that creates the cause of action not from defenses to claims. Jurisdiction is not determined by examining the initial complaint but by ascertaining whether a claim of the complaint was litigated and determined in the case. *Christianson, supra.*

4. In the patent law, invalidity and unenforceability, as well as noninfringement, are merely affirmative defenses. It is well established that federal subject matter jurisdiction may not rest on defenses but must instead rest on affirmative claims of federal rights. *Louisville & Nashville RR Co. v. Mottley* (1908)

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[6] In the complaint of the instant case, paragraphs 4-20 raise issues of the allowance of creditor's claims under 28 USC 157 (b)(2)(B) while the remaining counts raise counterclaims under 28 USC 157(b)(2)(C).

211 US 149, 29 SCt 42, 53 LEd 126; *Thiokol Chemical Corp. v. Burlington Industries, Inc.* (CA3 1971) 448 F2d 1328, 1330-31 *cert. den.* 404 US 1019, 92 SCt 684, 30 LEd2d 668 (1972). When questions of patent validity and infringement are raised in the same proceeding the trial court should enter judgement on both. *Simmons Fastener Corp. v. Illinois Tool Works, Inc.* (CAFC 1984) 739 F2d 1573; 222 USPQ 744 (citing *Lindeman*; *Stratoflex*; *Medtronic*).

> "Though an invalid claim cannot give rise to liability for infringement, whether it is infringed is an entirely separate question capable of determination without regard to its validity. Because both validity and infringement involve construction of a claim, and because the construction must be the same in determining both, it is desirable to decide both questions at the same time". *Id.*

5. In *Christianson v. Colt Industries* (1988) 108 SCt 2166, 100 LEd2d 811 this Court held:

a. "Statute 28 USC 1338(a) grants the district court's original jurisdiction of any civil action 'arising under' any federal statute relating to patents" *Id* 2168.

b. "Jurisdiction cannot be based on Federal Rule of Civil Procedure 15(b) by deeming the complaint amended". *Id* 2170[7].

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[7] In the earlier cases, in effect jurisdiction was based on Rules 56 (Cases 1,2,4), 12(b) (Case 2), and 41(b) (Case 3).

c. "The motion for summary judgement raised a patent law issue that Colt's patents were invalid under 35 USC 112. The district court, relying on the Section 112 theory, invalidated nine of Colt's patents. The Federal Circuit reversed". *Id* 2172.

d. "A patent law issue (validity of patents) is not necessary to overall success of a claim". *Id* 2174.

e. "The summary judgement papers focused on the patent law issues of validity, defenses and counterclaims. The patent law focus of the summary judgement papers did not assert a new patent law claim". *Id* 2177.

f. "A court may not in any case extend its jurisdiction where none exists". *Id* 2178.

g. In their concurring opinion, *Id* 2179-82, Justices Stevens and Blackmun held that "the answer to the question whether a claim arises under the patent laws may depend on the time when the question is asked. If the question is asked at the end of the trial, the answer may be different than if it had been asked at the outset to decide whether a federal district court has jurisdiction to try the case". *Id* 2179.

h. "The question whether a claim arises under the patent laws is similar to the question whether a claim arises under federal law. Section 1338 jurisdiction, like Section 1331 jurisdiction, is over claims not issues. A suit arises under the law that creates the cause of action". *Id* 2180 and Note 1 citations.

i. "Congress did not create an express cause of action to enforce 35 USC 112 of the patent laws, and there is no implied cause of action under Section 112"[8]. *Id* 2180.

j. "Since it seems plain that no implied cause of action exists under Section 112, an attempt at gaining federal court jurisdiction under Section 112 would be rejected under the 'artful pleading' doctrine" *Id* 2180 and Note 2.

k. "To sanction suits for declaratory relief as within the jurisdiction of the district courts because artful pleading anticipates a defense based on federal law would contravene the whole trend of jurisdictional legislation by Congress, disregard the effective function of the federal judicial system and distort the limited procedural purposes of the Declaratory Judgement Act[9]. Artful pleading cannot be invoked on the basis of facts not challenged in the complaint". *Id* 2180 Note 2 citations.

l. "The district court's opinion might be read as suggesting that whether patent claims are properly before the Federal Circuit on appeal should be determined by examining only the initial complaint and not by ascertaining whether a patent claim was litigated in the case. Such an approach would assume that whether a case 'arises under' the patent laws turns

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[8] In earlier Cases 1,3,4, in effect the courts created causes of action under 35 USC 282 providing for the affirmative defenses of patent invalidity.

[9] This particular citation by the Court applies to earlier Case 4 in which a creditor's complaint for Declaratory Judgement succeeded in invalidating petitioner's patent solely on issues of defense.

on the same considerations whether one is determining the Federal Circuit's appellate jurisdiction or a district court's original jurisdiction. But although 28 USC 1338(a) provides the basis for both types of jurisdictional assessment, Congress could not have intended the same analysis in both instances". *Id* 2181.

m. "The claim that was actually litigated (patent invalidity) did not arise under the Patent Laws". *Id* 2181.

6. Affirmative defenses are non- justiciable for the following reasons:

a. Federal courts must consider petitioner's claims in his complaints before they can consider issues of affirmative defenses. A defense rests on something that may or may not happen in the future, namely, whether claims of the complaint are proven. If claims of the complaint cannot be proven, the issue of defense is moot. When a defense rests on something that may or may not happen in the future, it is non-justiciable because it is not ripe. *United Public Workers v. Mitchell* (1947) 330 US 75.

b. The central concern in the ripeness doctrine is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all. *Wright, Miller & Cooper* 1992 Pocket Part Section 3532 note 1.5 citing *Lewis v. Continental Bank Corp.* (1990) 110 SCt 1249,1255, 494 US 472, 108 LEd2d 400; *Thomas v. Union Carbide Agricultural Products Co.* (1985) 105 SCt 3325,3333, 473 US 568,580, 87 LEd2d 409.

c. In earlier Cases 1-4 and in the instant cases, the courts acted in the clear absence of Article III Sec. 2.1 Constitutional jurisdiction because their judgements rest on affirmative defenses not on affirmative claims of petitioner's federal rights.

C. Judgements In Earlier Cases And In Instant Case Based On Affirmative Defenses Deprive Petitioner's Rights To Be Heard On Claims Of His Complaints

1. By using procedural rules and affirmative defenses to gain jurisdiction and to defeat petitioner's earlier and instant complaints, the courts have prejudged petitioner's claims in earlier Cases 1-4 and in the instant case. Where a conflict exists between a federal rule and substantive law the latter are unaffected by the rule, i.e., the rule is of no force and effect when rights involve substantive law, and jurisdiction. *Hanna v. Plummer* (1965) 380 US 460, 14 LEd2d 8, 8 SCt 1136; *Sibbach v. Wilson & Co.* (1941) 312 US 1, 85 LEd 479, 61 SCt 422 *reh.den.* 312 US 713, 85 LEd 1144.

2. The court's judgements, based on procedural defenses, do not replace the constitutional requirement that the procedural question must be necessary to resolve a claim put in issue by petitioner's claims. A procedural rule cannot extend federal court jurisdiction beyond the limits of the Constitution. *Hodgson v. Bowerbank* (1809) 9 US 303, 3 LEd 108; for Supreme Court Background see *US LEd Digest*, Courts par. 232.

3. The courts did not give petitioner the opportunity to be heard on his claims in earlier Cases 1-4 and in the instant case, failed to follow the jurisdictional statutes, failed to make trial of claims, and failed to follow the requirements for making final judgements, determinations of claims, and entry of judgements on all claims and parties.

4. The exclusion of petitioner's evidence[10] is inconsistent with substantial justice of petitioner's right to be heard and to offer evidence on claims of the complaint (causes of action). *United States v. Long* (CA3 1978) 574 F2d 761 *cert. den.* 439 US 985, 58 LEd2d 657, 99 SCt 577; *Whitehurst v. Wright* (CA7 1979) 592 F2d 834.

5. Even if a court has jurisdiction, a court which proceeds in such an arbitrary or improper manner that its action may be said to constitute a denial of due process, its judgement is void. *Windsor v. McVeigh* (1876) 93 US 274, 23 LEd 914 (without hearing or opportunity to be heard). *Winhoven v. U.S.* (CA9 1952) 201 F2d 174, 18 FRServ 60b.26, Case 1 (failing to act on motion); *Great American Trading Corp. v. I.C.P. Cocoa, Inc.* (CA7 1980) 629 F2d 1282 (failure to follow a statute requiring evidentiary trial)[11].

6. The inferior courts must be held to a lawful exercise of their prescribed jurisdiction. *Roche v. Evaporated Milk*

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[10] See judgements in earlier and instant cases.

[11] In earlier patent Cases 1,3,4 the courts failed to act on petitioner's motions for evidentiary trial of claims in complaints.

Asso. (1943) 319 US 21, 87 LEd 1185, 63 SCt 938; *U.S. Alkali Export Asso. v. U. S.* (1945) 325 US 196, 89 LEd 1554, 65 SCt 1120; *Banker's Life & Casualty Co. v. Holland* (1953) 346 US 379, 98 LEd 106, 74 SCt 145; *Will v. United States* (1967) 389 US 90, 19 LEd2d 305, 88 SCt 269. See also *Schlagenhauf v. Holder* 379 US 104, 13 LEd2d 152, 85 SCt 234; *Gulfstream Aerospace Corp. v. Macayamas Corp.* (1988 US) 99 LEd2d 296, 108 SCt 1133.

D. Petitioner's Challenge To The Court Of Appeal's Jurisdiction And The Public Interest In Holding Courts To Their Prescribed Jurisdiction Render Judgements Voidable In The Instant And Earlier Cases

In the courts below, petitioner made a number of objections including objection to subject matter jurisdiction in the instant case[12]. If the jurisdiction of a federal court is questioned, the court has the power and the duty, subject to review, to determine the jurisdictional issue. See numerous decisions in *Wright, Miller, Cooper, Federal Practice And Procedure, Jurisdiction 2d* 3536 footnote 2. The district court's and the appeal court's decisions were made without an inquiry into the question of subject matter jurisdiction raised by petitioner. In effect, the appeal court's decision says that a pre-trial disposition of a case under a federal rule issue of defense confers ju-

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[12] Because this is a direct appeal, the grounds that may be asserted as error are not limited to lack of jurisdiction and fraud. *Martin v. Wilks* 109 SCt 2180,2190 footnote 6.

risdiction and, therefore, there is no need to inquire into the question of subject matter jurisdiction.

Further, a party may collaterally attack an earlier judgement on grounds of lack of jurisdiction and fraud. *Martin v. Wilks* 109 SCt 2180,2189 (1989). In the complaint, petitioner made a number of objections including objection to subject matter jurisdiction in earlier Cases 1-4. See page 5 and footnote 4 *supra*. The court of appeal's opinion that the earlier cases are res judicata overlooks the public interest. Preclusion should apply unless the petitioner should be afforded the opportunity to reopen the controversy. See *Restatement (Second) of Judgements* 12 Comment d. Assuming that the conditions are met, relief from the earlier judgements ought to be granted under almost all circumstances. See *Restatement (Second) of Judgements* 69 Comment c. Thus, judgements in earlier cases may be subsequently attacked for lack of jurisdiction of subject matter if it appears that

(1) The subject matters of earlier cases were so plainly beyond the court's jurisdiction that their entertaining actions were manifest abuses of authority; or

(2) Allowing the earlier judgements to stand would substantially infringe the authority of other tribunals. See Restatement (Second) of Judgements 69 Comment a.

The judgements in earlier cases were based on affirmative defenses of patent invalidity (earlier Cases 1,3,4) and collateral estoppel (earlier Case 2). See footnote 1, *supra*. For the reasons in Parts A-C *supra*, the court's decisions based on af-

firmative defenses of patent invalidity and collateral estoppel were plainly beyond the court's jurisdiction under 28 USC 1338 in earlier Cases 1,3,4 and 28 USC 1331,1334 in earlier Case 2 and thus decisions were manifest abuses of authority made in the clear absence of all jurisdiction over the subject matter. Allowing the earlier judgements to stand as precedents would substantially infringe the authority of other courts to decide cases in similar circumstances and would seriously impair the public interest for adjudicating cases based on claims of complaints, if the practice of deciding cases on affirmative defenses is allowed to continue. Suits arise under the laws that create causes of action not from defenses to claims. *Christianson, supra.*

E. Sanctions Based On Defense Issues In Papers Not Signed By Petitioner Overlook The Facts And The Law

1. Federal Rule of Civil Proceure 11 provides for sanctions against a party who signs and files a pleading without reasonable inquiry grounded in facts and warranted by law or a good faith argument for the extension, modification, or reversal of existing law. Since there has been no adjudication on the merits of claims in the petitioner's complaints, the court's decisions that sanctions are warranted are based on affirmative defenses, in pleadings signed and filed by respondents. Under Rule 11, sanctions cannot be based on pleadings not signed and filed by petitioner. *Zaldivar v. Los Angeles* (CA9 1986) 780 F2d 823 (whether the document at issue was well grounded in fact); *Wiley v. Coastal Corp. et. als.* (1992) 112 SCt 1076 (con-

duct of party with respect to court filings).

2. On the question whether Rule 11 sanctions can be considered on issues of defenses, some courts require counsel to cite all opposing authority. *Jorgenson v. Colusia County* (CA11 1988) 846 F2d 1350. Not all courts require total disclosure. In *Golden Eagle Distributing Corp. v. Burroughs Corp.* (CA9 1986) 801 F2d 1531 the court found that although the paper in question was factually and legally supportable, it failed to notify the court of the existence of adverse authority. In the instant case, the courts failed to determine whether claims of the complaint were factually and legally supportable where the complaint itself notified the courts that objections were being made against adverse decisions in earlier cases.

3. On the question whether Rule 11 sanctions can be considered only if the jurisdictional requirements have been met[13], the various circuits are not in agreement. *Orange Production Credit Ass'n v. Frontline Ventures, Ltd* (CA9 1986) 792 F2d 797 (lack of subject matter jurisdiction does not bar sanctions under Rule 11); *Chick Kam Choo v. Exxon Corp.* (CA5 1985) 764 F2d 1184 (jurisdiction wanting); *Johnson Chemical Co., Inc. v. Home Care Products, Inc. (CA2 1987) 823 F2d 28,30 (dismissal by notice deprives court of jurisdiction).* However, *Orange Production* is wrong because Rule 11 "shall not be construed to extend or limit the jurisdiction of the U.S. Dis-

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[13] Here whether the courts have jurisdiction of the subject matter under 28 USC 1334 and 28 USC 157(2)(B) and (C) and, if so, whether the courts have post-judgement jurisdiction for Rule 11 sanctions.

trict Courts". FRCP 82; *Hanna, Sibbach, Hodgson, U.S. LEd Digest* par 232,243 et seq., *supra.*

F. Petitioner's United States Patents Are Not Subject To Assignment To The U.S. Marshall By Operation Of California State Law

1. *Re Peregrine* 116 BR 194,205 footnote 16 held that "while it appears that in California a judicial lien may, in fact, be used to encumber a copyright [or patent], that is only half the task; the court must also determine whether federal law insulates copyrights [or patents] from attachment by state court procedures"[14]. As to patents, state law is limited to determining the relative rights of creditors and patent exemptions. *Re Transportation Design* (BC SD Cal. 1985) 48 BR 635,639-40.

2. State law may not nullify the patent laws of Congress regulating their transfer. *Allen v. Riley* (1906) 203 US 347. Federal regulation under 35 USC 261 preempts state law. *Re Peregrine* 116 BR 194,206 footnote 17. Where federal law excludes state law, the court must apply the federal law. *Re Velikoplejki* (BC SD Fla 1985) 54 BR 534,538; *Re Transpor-*

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[14] Judgement lien creditors are not purchasers or mortgagees under 35 USC 261. *Re Peregrine* 116 BR 194,206 footnote 17. A judgement lien creditor is not a bona fide purchaser. *Re Mellor* (CA9 1984) 734 F2d 1396,1941. Nor is creditor's judgement a lien under 28 USC 1962 because patents have no situs for jurisdictional purposes. "Intellectual property, such as patents, is the most intangible form of property", *Filmtec Corp. v. Allied Signal, Inc.* (CAFC 1991) 939 F2d 1568, 1570 n.5, "with no situs for jurisdictional purposes", see *4 Wright & Miller, Federal Practice and Procedure* 1071, at 429-30 (1987) (rule that jurisdiction can be based on location of property "obviously has no relevance when the debt or obligation is not embodied in a writing at all, as is true of patents").

tation Design (BC SD Cal 1985) 48 BR 635,639-40; *Unarco Industries, Inc. v. Kelley Co.* (CA7 1972) 465 F2d 1302,1305-06.

3. 35 USC 261 governs the assignment, and voidance of assignment of patents. Questions of patent assignments arise under the patent laws. *Crown Die & Tool Co. v. Nye Tool & Machine Works* (1923) 261 US 24, 67 LEd 516, 43 SCt 254; SCt background *US LEd Digest* Courts 291; *Geni- Chlor Int'l, Inc. v. Multisonics Dev. Corp.* (CA9 1978) 580 F2d 981, 200 USPQ 67.

4. In *Re Peregrine* (Bkrtcy. CD Cal 1990) 116 BR 194 the court was faced with the same issue which is now before this Court, i.e., should a creditor have the status of a bona fide purchaser, rather than that of a judicial lien creditor. Creditor Cap Fed argued that the term transfer in section 205(d) of the Copyright Act refers only to consensual transfers. The court rejected this argument

> "The Copyright Act's definition of transfer is very broad and specifically includes transfers by operation of law. 17 USC 201(d)(1). The term is broad enough to encompass not merely purchasers but lien creditors as well." *Id* 206. However, in footnote 17, the court distinguished the Patent Act "Unlike 17 USC 205(d), the priority scheme created under the Patent Act specifically applies only to subsequent purchasers and mort-

gagees. 35 USC 261. Lien creditors are neither."
Id 206 footnote 17.

The court held that Cap Feds earlier prepetition unperfected security interest in NPI's copyrights is trumped by NPI's hypothetical judicial lien. *Id* 207.

5. Petitioner's ownership of patents trumps the creditor's unsecured and unperfectable claim. Creditors are not secured creditors that could have perfected their security interests by filing in the Patent Office. Unsecured, unperfected interests have no claim to title under 35 USC 261. *Id* 206 footnote 17. Under 35 USC 261 the creditor must have the status of a bona fide purchaser, rather than that of unsecured creditor since 35 USC 261 refers only to consensual transfers. Creditors are neither purchasers or mortgagees under 35 USC 261. Indeed, creditors are not even lienholders because their judgement lien does not apply to patents.

G. Conflicts Of Decisions

(a) Dismissal Of The Complaint

1. The court of appeals cites *Robi v. Five Platters, Inc.* (CA9 1988) 838 F2d 318,321 for the proposition, by implication, that the affirmative defense of res judicata is a claim for purposes of Rule 54(b) in the instant case[15]. This is contrary to the decisions of this Court and other Circuits. See citations in

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[15] The court of appeals cites earlier Case 1 for the propositions, by implication, that the affirmative defense of patent invalidity is a claim for purposes of Rule 54(b), jurisdiction under 28 USC 1338(a), and the 5th

Part A *supra*. This Court should grant certiorari here, **first**, to resolve the conflicts created by the court of appeal's decision and this Court's decisions in *Sears Roebuck, supra* and *Curtis Wright, supra* that "judgements must be determined on the merits of a cause of action", **second**, to explicitly rule that affirmative defenses of patent validity and res judicata are not claims for purposes of final judgements under Federal Rule of Civil Procedure 54(b) and, **third**, to resolve the conflicts created by the Ninth Circuit's decision and decisions in the Fourth and Seventh Circuits in this matter in *Flynn, supra, Smith, supra.*

2. The court of appeals cites *Robi v. Five Platters, Inc.* (CA9 1988) 838 F2d 318,321 for the proposition, by implication, that the affirmative defense of res judicata is a claim for purposes of jurisdiction under 28 USC 1334 and 28 USC 157(b) (2)(B) and (C) in the instant case[16]. This is contrary to the decisions of this Court and other Circuits. See citations in Part B *supra*. This Court should grant certiorari here, **first**, to resolve the conflict created by the court of appeal's decision and this Court's decision in *Christianson, supra* that affirmative defenses are not claims for purposes of jurisdiction under 28 USC 1338, 1331,1343; this Court's decision in *Louisville &*

Amendment right to be heard on claims of a complaint. It also cites earlier Case 2 for the propositions, by implication, that the affirmative defenses of collateral estoppel and judicial immunity are claims for purposes of Rule 54(b), jurisdiction under 28 USC 1331 and 1343, and the 5th Amendment right to be heard on claims of a complaint.

16 See footnote 15.

Nashville RR Co., supra that "federal subject matter jurisdiction may not rest on defenses but must instead rest on affirmative claims of federal rights"; and this Court's decision in *United Public Works, supra* that "a defense which rests on something that may or may not happen in the future is not ripe", **second**, to explicitly rule that affirmative defenses of patent invalidity and res judicata are not claims for purposes of jurisdiction under 28 USC 1338,1331,1343,1334 and 28 USC 157(b)(2) (B) and (C) and under Article III Section 2.1 of the Constitution and, **third**, to resolve the conflicts created by the Ninth Circuit's decision and decisions in the Third and Federal Circuits in the matter in *Thiokol Chemical, supra* and *Simmons Fastener, supra*.

3. The court of appeals cites *Robi v. Five Platters, Inc.* (CA9 1988) 838 F2d 318,321 for the proposition, by implication, that the affirmative defense of res judicata does not deprive petitioner's right to be heard on his claims in the instant case[17]. This is contrary to the decisions of this Court and other Circuits. See citations in Part C *supra*. This Court should grant certiorari here, **first**, to resolve the conflicts created by the court of appeal's decision and this Court's decisions in *Hanna, supra* and *Sibbach, supra* that "Where a conflict exists between a federal rule and substantive law the latter is unaffected by the rule, i.e., the rule is of no force and effect when rights involve substantive law, and jurisdiction"; this Court's

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[17] See footnote 15.

decision in *Hodgson, supra* that "A procedural rule cannot extend federal court jurisdiction beyond the limits of the Constitution"; this Court's decision in *Windsor, supra* that a judgement is void when a court denies a hearing or opportunity to be heard; and this Court's decisions in *Roche, supra, U.S. Alkali, supra, Banker's Life, supra, Will, supra, Schlagenhauf, supra*, and *Gulfstream, supra* that the inferior courts must be held to a lawful exercise of their prescribed jurisdiction, **second**, to explicitly rule that affirmative defenses of patent validity and res judicata which deprive the right to be heard on claims of complaints offend due process and, **third**, to resolve the conflicts created by the Ninth Circuit's decision and decisions in the Third and Seventh Circuits in *United States v. Long, supra*, and *Whitehurst, supra* that the exclusion of evidence is inconsistent with substantial justice to be heard and to offer evidence on claims of the complaint (causes of action).

4. The court of appeals cites *Robi v. Five Platters, Inc.* (CA9 1988) 838 F2d 318,321 for the proposition, by implication, that its decision does not require inquiry into the question of subject matter jurisdiction raised by petitioner in the instant case. This is contrary to the decisions of this Court and other Circuits. See numerous decisions in *Wright, Miller, Cooper Federal Practice and Procedure*, Jurisdiction 2d 3536 footnote 2. This Court should grant certiorari here to resolve the conflicts created by the court of appeal's decision and the numerous decisions in *Wright, Miller, Cooper Federal Practice and Procedure, Jurisdiction 2d* 3536 footnote 2.

5. The court of appeals cites *Robi v. Five Platters, Inc.* (CA9 1988) 838 F2d 318,321 for the proposition, by implication, that a party may not collaterally attack an earlier judgement on grounds of lack of jurisdiction. This is contrary to the decisions of this Court and other Circuits. See citations in Part D *supra*. This Court should grant certiorari here to resolve the conflicts created by the court of appeal's decision and this Court's decisions in *Martin, supra* that parties may collaterally attack judgements on grounds of lack of jurisdiction and fraud; and this Court's decisions and decisions of other Circuits in *Restatement (Second) of Judgements* 12 Comment d that judgements in earlier cases may be attacked for lack of jurisdiction when it appears that the earlier judgements were manifest abuses of authority or have seriously impaired the public interest or have infringed constitutional protections, here the right to be heard on claims of a complaint.

(b) Sanctions

The court of appeals cites *Townsend v. Holman Consulting Corp.* (CA9 1990) 929 F2d 1358 (en banc) and *Orange Production, supra* for the propositions, first, that defense issues in papers signed and filed by respondents, not signed and filed by the petitioner, warrant sanctions and, second, that sanctions can be made when the jurisdictional and statutory requirements are not met. This is contrary to the decisions of this Court and other Circuits. See citations in Part E *supra*. This Court should grant certiorari here, **first**, to resolve the conflicts created by the court of appeal's decision and this Court's decision in

Wiley, supra that the alleged conduct must relate to court filings by a party, **second**, to explicitly rule that sanctions cannot be based on issues of defense in papers not signed by a party but must be based solely on contents of the document at issue[18]; and that sanctions cannot be made if the jurisdictional requirements are not met and, **third**, to resolve the conflicts created by the Ninth Circuit's decisions and the decisions in the Second and Fifth Circuits in *Chick Kam Choo, supra* and *Johnson, supra* that jurisdiction is necessary.

(c) Execution On Patents

The court of appeals cites *Pacific Bank v. Robinson* 57 Cal. 520,524 (1981); *Peterson v. Sheriff of San Fransisco* 115 Cal. 211,213 (1896); *Zanetti v. Zanetti* 77 Cal. App. 2d 553,559 for the propositions, first, that judgement lien creditors are bona fide purchasers under 35 USC 261 and lienholders under 28 USC 1962, and that California state law can be used to execute against United States Patents. This is contrary to decisions of this Court and other Circuits. See citations in Part F *supra*. This Court should grant certiorari here, **first**, to resolve the conflicts created by the court of appeal's decision and this Court's decision in *Allen v. Riley, supra* that "State law may not nullify the patent laws of Congress regulating their transfer"; this Court's decision in *Crown Die & Tool, supra*, that "Questions of patent assignments arise under the patent laws"[19];

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[18] The Ninth Circuit itself agrees. See *Zaldivar, supra* (whether the document at issue was well grounded in fact).

[19] The Ninth Circuit itself agrees. See *Geni-Chlor, supra.*

and in this Court's decisions in *US LEd Digest* Courts 291, **second**, to explicitly rule, first, that federal law insulates patents from attachment by state court procedures[20]; that judgement lien creditors are not purchasers or mortgagees under 35 USC 261; that a creditor's judgement is not a lien against patents under 28 USC 1962; and that courts lack jurisdiction to assign United States Patents by operation of California state laws and, **third**, to resolve the conflicts created by the Ninth Circuit's decisions and the decision in the Federal Circuit in *Filmtec, supra* and in *Federal Practice and Procedure* 1071 at 429-30 (1987) that patents have no situs for jurisdictional purposes; and in the Seventh Circuit decision in *Unarco Industries, supra* that where federal law excludes state law, the court must apply the federal law.

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[20] The Ninth Circuit's decision conflicts with decisions in its own Circuit. See *Re Peregrine, supra* 205 footnote 16, 206 footnote 17; *Re Transportation Design, supra* at 639-640.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the Memorandum opinion of the Court of Appeals in this matter[21].

Dated: 11 March, 1994

Respectfully submitted

James Constant
Pro Per Petitioner

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21 If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinions and opinions in the Third, Fourth, Fifth, Seventh and Federal Circuits cited in Parts A through F, *supra*.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: JAMES CONSTANT,	)	Nos. 92-55465
	)	92-56220
Debtor,	)	92-56475
	)	
	)	D.C. No.
JAMES CONSTANT,	)	CV-91-5456-R
	)	
v.	)	
	)	
ADVANCED MICRO-DEVICES,	)	
INC., et al.	)	MEMORANDUM*
	)	
Defendants - Appellees.	)	
	)	

Appeal from the United States District Court for the Central District of California Manuel L. Real, District Judge, Presiding

Submitted November 17, 1993**

Before: SCHROEDER, D.W. NELSON, and THOMPSON, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir, R, 36-6.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

James Constant appeals pro se the district court's orders (1) dismissing Constant's complaint, (2) enjoining Constant from filing further papers without prior court approval, (3) imposing Rule 11 sanctions against Constant, and (4) assigning Constant's patents and copyrights to the U,S, marshal to satisfy the court's judgment against Constant, We have jurisdiction pursuant to 28 U.S.C. 1291. We affirm and impose sanctions against Constant for filing a frivolous appeal.

The history of Constant's litigation, which began in 1985 with patent infringment actions, is summarized in previous decisions of the Federal Circuit, and we do not repeat it here. See *Constant v. United States*, 919 F.ld 654, 656 (Fed. Cir.), *cert. denied*, 111 S. Ct. 2799 (1991); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560 (Fed. Cir.), *cert. denied*, 488 U.S. 892 (1988). After Constant's numerous district court actions were decided adversely to him, and faced with numerous sanctions awards imposed by various U.S. district and appellate courts for his frivolous litigation, Constant filed for bankruptcy.

Constant filed the instant action in bankruptcy court as an adversary proceeding objecting to creditors' claims. On defendants' motion, the district court withdrew the reference of Constant's complaint to the bankruptcy court. The complaint was transferred to district court and assigned to Judge Real. Constant then moved to recuse Judge Real. The district court denied the recusal motion and dismissed Constant's complaint on grounds of res judicata and collateral estoppel. The district

court also enjoined Constant from filing any future papers containing claims or allegations against these defendants without first obtaining court approval.

After the district court entered judgment, defendants requested the imposition of Rule 11 sanctions against Constant for filing this action. The district court awarded defendants $28,921.72 in attorneys' fees under Rule 11. The court then, on motion by defendants, assigned Constant's patents and copyrights to the U.S. marshal to satisfy the court's judgment.

Constant filed timely notices of appeal from all three district court final orders. In appeal No. 92-55465, from the underlying judgment, Constant contends that the district court erred by (1) withdrawing the reference to bankruptcy court, (2) denying Constant's recusal motion, (3) dismissing the action, and (4) entering the injunction. In appeal No. 92-56220, Constant appeals the imposition of Rule 11 sanctions. In appeal No. 92-56475, Constant appeals the district court's assignment of his patents and copyrights to the U.S. marshal to satisfy the judgement.

I. NO. 92-55465

A. WITHDRAWAL OF REFERENCE

We review for abuse of discretion the district court's order granting defendants' motion to withdraw the reference to bankruptcy court. *Taxel v. Electronic Sports Research (In re Cinematronics, Inc.)*, 916 F.2d 1444, 1451 (9th Cir. 1990). A

district court may withdraw, in whole or in part, any case or proceeding referred to bankruptcy court, on its own motion or on timely motion by any party, for cause shown. 28 U.S.C. 157(d). The factors to be considered in determining whether to withdraw the reference include whether the proceeding is a core proceeding, judicial economy, convenience, and expertise of the court. *United States v. Star Route Box 1328*, 137 B.R. 802, 806 (Bankr. D. Or. 1992).

Here, Constant's complaint alleged that the judgments against him which were the basis of his creditors' claims were procured by fraud and conspiracy. Constant's complaint thus constituted another collateral attack on the judgments in favor of defendants obtained in the earlier litigation. Further, because Judge Real had presided over previous, virtually identical actions brought by Constant, Judge Real was familiar with the facts and claims raised by the complaint. Under these circumstances, the district court did not abuse its discretion by withdrawing the reference. *See In re Cinematronics, Inc.*, 916 F.2d at 1451; *Star Route Box 1328*, 137 B.R. at 806.

B. RECUSAL MOTION

We review the denial of a recusal motion for abuse of discretion. *Sewer Alert Comm. v. Pierce County*, 791 F.2d 796, 798 (9th Cir. 1986). A motion for recusal of a judge pursuant to 28 U.S.C. 144 will be granted only upon a showing of bias or prejudice from an extrajudicial source. *Toth v. Trans World Airlines, Inc.*, 861 F.2d 1381, 1388 (9th Cir. 1988). A motion for recusal which does not point to an extrajudicial source of

bias is legally insufficient. *Id.*

Here we find no abuse of discretion in the district court's denial of the recusal motion because Constant failed to show any extrajudicial source of bias. *See id.* Judge Real's adverse rulings in previous litigation do not demonstrate personal bias against Constant. *See United States v. Azhocar*, 581 F.2d 735, 739 (9th Cir. 1978), *cert. denied*, 440 U.S. 907 (1979). Further, the fact that Constant filed a lawsuit against Judge Real based on Judge Real's decisions in other, related litigation does not require recusal. *See Ronwin v. State Bar of Arizona*, 686 F.2d 692, 701 (9th Cir. 1981), *cert. denied*, 461 U.S. 938 (1983) and *rev'd on other grounds*, 466 U.S. 558 (1984).

C. DISMISSAL OF COMPLAINT

We review de novo the district court's determination that an action is barred by the doctrine of res judicata. *Robi v. Five Platters Inc.*, 838 F.2d 318, 321 (9th Cir. 1988).

The doctrine of res judicata encompasses the doctrines of issue preclusion and claim preclusion. *Id.* "Claim preclusion treats a judgment, once rendered, as the full measure of relief to be accorded be- tween the same parties on the same claim or cause of action." *Id.* (quotation omitted). Claim preclusion bars relitigation of all claims that were previously available to the parties, whether or not the claims were actually asserted and adjudicated in the prior action. *Id.* at 322.

Here, Constant's complaint alleged that judgements obtained against him in previous actions were void because they were

rendered by courts lacking jurisdiction and were procured by fraud and conspiracy. Constant's claims regarding his patents had already been litigated and determined on the merits. *see, Constant v. Advanced Micro-Devices*, 848 F.2d 1560, and Constant had already brought one action challenging those judgements on grounds of fraud, *see Constant v. Wilson*, Nos. 88-1195 to 88-1198 unpublished memorandum decision (Fed. Cir. Aug 25, 1988). Thus, the district court properly dismissed Constant's complaint on the ground that his claims were nothing more than collateral attacks on the previous judgments and as such were barred by the doctrine of res judicata. *See Robi*, 838 F.2d at 321-22.

D. PRE-FILING ORDER

We review the district court's order enjoining the filing of meritless claims for abuse of discretion. *Moy v. United States*, 906 F.2d 467, 469 (9th Cir. 1990). An injunction restricting access to the courts is an extraordinary remedy which should be narrowly tailored and rarely used. *Id* at 470. We have outlined specific requirements which district courts must follow before issuing a pre-filing order. *De Long v. Hennessey*, 912 F.2d 1144, 1147-48 (9th Cir.), *cert. denied*, 498 U.S. 1001 (1990). Specifically, (1) the plaintiff must be given notice and the opportunity to oppose the order, (2) there must be an adequate record for review, (3) the court must make substantive findings of frivolousness, and (4) the order must be narrowly tailored to curb the abuses of this particular litigant. *Id.*

The record demonstrates that all the De Lonq requirements

were met in this case. Constant was given notice of the defendants' motion for injunction, filed extensive opposition papers, and appeared at the hearing on the motion for injunction. The court made specific findings of frivolousness, and these fndings are fully supported by the record in this case and by Constant's history of litigiousness. The injunction was sufficiently narrow in that it limited Constant from filing further papers against these defendants regarding his patent claims, but did not prohibit Constant from access to the courts in unrelated matters. Under these circumstances, we conclude that the injunction was appropriate to stop Constant's meritless litigation. See *id.*

II. NO. 92-56220

We review the imposition of Rule 11 sanctions for abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400-01 (1990). Rule 11 sanctions are proper if either a) the pleading is filed for an improper purpose, or b) the pleading is frivolous. *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc). A pleading is frivolous if it is both baseless and made without a reasonable and competent inquiry. *Id.*

Here, Constant's claims were clearly barred by res judicata and therefore his complaint was frivolous. Further, this complaint does not represent an isolated instance of a frivolous action filed by a pro se litigant but rather is a continuation of

Constant's relentless campaign of frivo- lous litigation against these defendants. Moreover, Constant has been repeatedly warned by various courts that persistence with this meritless litigation will result in sanctions and has already been sanctioned numerous times. Under these circumstances, the district court did not abuse its discretion by imposing Rule 11 sanctions and awarding defendants attorneys' fees. See *Id.*

III. NO. 92-56475[1]

A district court has authority to enforce its money judgment in accordance with the practice and procedure of the state in which it sits. Fed. R. Civ. P. 69(a); *Duchek v. Jacobi*, 646 F.2d 415, 416 (9th Cir. 1981). Under California law, all property of the judgment debtor is subject to enforcement of a money judgment including intangible property such as patents and copyrights. Cal. Civ. Proc. Code 695.010; *Pacific Bank v. Robinson*, 57 Cal. 520, 524 (1881). The proper procedure to execute on a patent is to obtain an order of the court directing the patent holder to assign the patent. *Peterson v. Sheriff of San Francisco*, 115 Cal. 211, 113 (1896). The assignment need not be executed personally by the patentee; the court may authorize a court officer to execute the assignment and the assignment will be binding on the patentee. *Id.; Zanetti v. Zanetti*, 77 Cal. App, 2d 553, 559 (1947).

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[1] Constant's motion for reconsideration of this court's order granting defendants' late motion for leave to join in the answering brief is denied.

Here, defendants moved for an order to enforce the judgement against Constant's patents and copyrights, which represented his only assets. The district court granted the motion and entered an order directing Constant to assign the patents and copy rights to the U.S. marshal. The order further provided that if Constant failed to do so within seven days, the U.S. marshal was directed to execute an assignment which would have the same binding effect as if executed by Constant. The order was within the district court's authority to enforce its judgement. *see Duchek*, 646 F.2d at 416; *Pacific Bank*, 57 Cal. at 524, and was carried out in compliance with the applicable state procedure and practice, see *Peterson*, 115 Cal. at 213; *Zanetti*, 77 Cal. App. 2d at 559. We have considered Constant's numerous arguments on appeal and find them to be without merit. Accordingly, we affirm the district court's order assigning Constant's patents and copyrights to the U.S. marshal to satisfy the court's judgment.

IV. SANCTIONS ON APPEAL

In all three appeals, defendants request sanctions against Constant. This court has discretion to impose damages against litigants, even pro se, as a sanction for bringing a frivolous appeal. Fed. R. App. P. 38, 28 U.S.C. 1912; *Wilcox v. Commissioner*, 848 F.2d 1007, 1008-09 (9th Cir. 1988) ($1,500 sanction imposed on pro se litigant for bringing a frivolous appeal). An appeal is frivolous if the results are obvious or the

arguments of error are wholly without merit. *Wilcox*, 848 F.2d at 1009. Constant's claims are wholly without merit, and his appeals are especially frivolous in light of his long history of repeatedly litigating the same claims despite repeated warnings by various trial and appellate courts that he would be sanctioned for persisting with his activities. *See Id.* Nevertheless, in the exercise of our discre- tion we decline to award sanctions in favor of defendants.

AFFIRMED.

ADRIAN M. PRUETZ
TERRENCE M. FRANKLIN
MARCUS A. TORRANO
MORRISON & FOERSTER
555 West Fifth Street, Suite 3500
Los Angeles, California 90013-1024
Telephone: (213) 892-5200

Attorneys for Defendants
FUJITSU LIMITED, FUJITSU MICROELECTRONICS, INC., MORRISON & FOERSTER and LIMBACH & LIMBACH

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JAMES CONSTANT,	)	No. CV 91 5456 R
	)	
Plaintiff,	)	(BKTCY. CASE NO.
	)	19270 KL Converted
v.	)	to Chapter 7.
	)	ADV CASE NO. 91-
ADVANCED MICRO-DEVICES,	)	00623, ref. to
INC., et.al	)	District Court
	)	
Defendants.	)	ORDER DISMISSING
	)	COMPLAINT
	)	
	)	Date: Feb.18,1992
	)	Time: 10:00 a.m.
	)	Courtroom of the
	)	Honorable Manuel
_____	)	L. Real

WHEREAS, the motion made by defendants Fujitsu Limited, Fujitsu Microelectronics, Inc., Morrison & Foerster, and Limbach & Limbach (collectively, the "Fujitsu Defendants") to dismiss the "Complaint: Debtor's Objections to Creditor's Claims Based On Void Judgements Obtained Through Fraud; Demand for Relief; Jury Demand" ("Complaint") filed by plaintiff James Constant in this matter, came on regularly for hearing before the Honorable Manuel L. Real on February 18, 1992; and

WHEREAS, plaintiff James Constant brought a Motion for Order Staying Hearing on the Fujitsu Defendant's Motion to Dismiss the Complaint; a Motion to Strike the Motion to Dismiss; a Motion for Declaratory Judgement that Federal Statutes 28 USC 1331, and 2072, and Rules 11, 12(b), 41(b), and 56 are Unconstitutional; a Request for Hearing on the Propriety of Taking Judicial Notice of Documents and Tenor of the Matter Noticed; a Motion to Strike Defendant's Applications for Orders of Injunction; and

WHEREAS, the Court has considered all evidence presented and papers filed and all oral and documentary argument, and good cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING ORDERS:

1. Plaintiff's Motion To Strike the Fujitsu Defendant's Motion to Dismiss is DENIED;

2. Plaintiff's Motion for Order Staying Hearing on the Fujitsu Defendant's Motion to Dismiss the Complaint is DENIED;

3. Plaintiff's Motion for Declaratory Judgement that Federal Statutes 28 USC 1331, and 2072 and Rules 11, 12(b), 41(b), and 56 are Unconstitutional is DENIED;

4. Plaintiff's Request for Hearing on the Propriety of Taking Judicial Notice of Documents and Tenor of the Matter Noticed is DENIED;

5. Plaintiff's Motion To Strike Defendant's Applications for Orders of Injunction is DENIED; and

6. The Fujitsu Defendant's Motion To Dismiss is GRANTED, and THE COMPLAINT IS DISMISSED WITH PREJUDICE.

Dated: March 10, 1992

MANUEL L. REAL
Judge of the United
States Court for
the Central District
of California

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: JAMES CONSTANT,	)	Nos. 92-55465
	)	92-56220
Debtor,	)	92-56475
	)	
	)	D.C. No.
	)	CV-91-5456-R
JAMES CONSTANT,	)	Central
	)	California
v.	)	(Los Angeles)
	)	
ADVANCED MICRO-DEVICES,	)	
INC., et al.	)	ORDER
	)	
Defendants - Appellees.	)	
	)	

Before: SCHROEDER, D.W. NELSON, and THOMPSON, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

RULE 54 Judgement Upon Multiple Claims Or Involving Multiple Parties

(b) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third- party claim, or when multiple parties are involved, the court may direct the entry of a final judgement as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for entry of judgement. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not termi- nate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgement adjudicating all the claims and the rights and liabili- ties of the parties.

28 USC 1338 Patents

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, ...

28 USC 1331 Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

28 USC 1343 Civil Rights

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42.

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

28 USC 1334 Bankruptcy Cases And Proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have jurisdiction of all cases under title 11.

28 USC 157(b) Procedures

(2) Core proceedings include ...

(B) allowance or disallowance of claims against the estate or exemptions from prop- erty of the estate ...; (C) counterclaims by the estate against persons filing claims against the estate.

Amendment V United States Constitution

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Federal Rule Of Civil Procedure 11

. . . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative shall impose upon the person who signed it, a represented party, or both, an appropriate sanction ...

28 USC 1962 Lien

Every judgement rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgement of a court of general jurisdiction in such State .....

35 USC 261 Ownership; Assignment

..... patents, or any interest therein, shall be assignable in law by an instrument in writing. The ... patentee, or his assigns or legal representatives may in like manner may in like manner grant and convey an exclusive right under his ... patents, ..

An assignment ... shall be void against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from the date or prior to the date of such subse- quent purchase or mortgage.